

KENT GREGERSEN

IBLA 74-248

Decided August 16, 1974

Appeals from decisions by the Elko and Ely District Offices of the Bureau of Land Management rejecting appellant's claims of ownership of horses on the public lands.

Affirmed.

Act of December 15, 1971

Claims of ownership of horses on the public lands, which were filed under the act of December 15, 1971, 16 U.S.C. §§ 1331-1340 (Supp. II 1972), and regulation 43 CFR 4713.2(a), must be rejected when the applicant fails to furnish adequate evidence of ownership of the horses.

APPEARANCES: Kent Gregersen, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Kent Gregersen has appealed from two decisions of the Bureau of Land Management (BLM) rejecting his claims of ownership of horses on the public lands in Nevada on the grounds that they did not constitute adequate proof of ownership. One appeal is from a decision of March 7, 1974, by BLM's Elko District Office rejecting his claim No. 27-01-3068 for 17 horses. The other is from a decision by the Ely District Office, dated January 29, 1974, rejecting his claim No. 27-04-74-1 for 20-25 horses. The two cases were consolidated and transmitted to this Board by the Nevada State Director, BLM, because they involve the same issues, animals, and partial overlap of geographic areas of the public lands.

The claim affidavits were filed pursuant to the Act of December 15, 1971, 85 Stat. 649, 16 U.S.C. §§ 1331-1340 (Supp. II 1972), and the regulations in 43 CFR Part 4710. The Act authorized and directed the Secretaries of the Interior and Agriculture to protect and manage wild free-roaming horses and burros as components of the public lands, including lands in the national forests. It defined "wild free-roaming horses

and burros" to mean all unbranded and unclaimed horses and burros on the public lands of the United States. It provided that a person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

Regulation 43 CFR 4713.2(a), under which appellant's claims were filed, provides in pertinent part:

Any person claiming ownership under state branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership, with supporting evidence, shall be submitted within 90 days of the effective date of these regulations. * * * 1/ (Emphasis added.)

The rejections of appellant Gregersen's claims by BLM were proper. A copy of the decision by the Elko District Office is attached as it discusses appellant's answers to the various questions on the claim affidavit form. The decision is adopted and incorporated as a part of this opinion, except that we delete the last two sentences under III on the second page which read:

* * * Branding abandon (sic) horses created estrays which defeated the status of this animal becoming a wild free-roaming horse under Public Law 92-195. 2/ In the event a horse(s) is corralled or captured in the Elko District wearing your brand, you will be able to claim this animal(s) under the provisions of State of Nevada Livestock Laws and Regulations, Chapter 569 Estrays. (NRS 569.005-569.130). 3/

1/ The regulations were effective upon publication in the Federal Register on August 15, 1973 (38 F.R. 22003).

2/ The Act of December 15, 1971, supra.

3/ These are merely gratuitous statements which have no bearing on the resolution of the issues in the case. We have some reservations as to whether or not they are correct statements of law, principally because of appellant's statement "For some years before P.L. 92-195 was enacted, I branded horses in many areas in Nevada and Utah. Purpose: To keep ranchers from shipping them. If this had not been done, some areas would have absolutely no horses left today." However, as the statements are not relevant to a resolution of the case we see no necessity for making a determination on them.

The decision of the Ely District Office did not discuss in detail the information furnished by appellant but merely rejected the claim on the ground it did not constitute adequate proof of ownership. Much of the discussion as to the vagueness and indefiniteness of appellant's claim in the Elko District Office decision is equally applicable to his claim which is the subject of the Ely District Office decision.

Gregersen's claims are indefinite as to the numbers of horses. One claim is for 17 "Exact number not known." The other claim is for 20 to 25 horses. He is claiming branded horses and their unbranded offspring, and states that it is impossible to describe offspring he has not seen. He has a registered brand in the State of Utah but not in Nevada. Information in the file indicates that for several years prior to the enactment of the Act of December 15, 1971, he caught and branded several mustangs in an effort to prevent indiscriminate gathering of wild horses for commercial purposes; his objective was to preserve the animals in their wild free-roaming state and not to exert ownership per se. His descriptions as to the geographic areas on the public lands in which the horses are located are inadequate. On one claim affidavit he gave the location as the "Elko District (Unknown)," and on the other as "Unknown." It would be unreasonable to expect the BLM to conduct a search of entire districts and round up horses which are so indefinitely described, or to permit appellant to do so.

Appellant Gregersen alleges that brands on animals are prima facie evidence of ownership. This is true. However, he has not shown, and the evidence in the case indicates otherwise, that the horses he is claiming were legally branded under Nevada law as required in NRS 564.010 to 564.150, inclusive. Furthermore, he has stated that some of the animals he is claiming are unbranded offspring.

Appellant also alleges that no one can deal with BLM and State laws at the same time and that BLM should decide which law it will follow. However, section 5 of the Act of December 15, 1971 – the act under which the subject claims were filed – states clearly and unequivocally:

A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

16 U.S.C. § 1335 (Supp. II 1972).

Thus, Congress has mandated that recovery must be in compliance with State law, and there is no discretionary authority left with the Secretary of the Interior in this respect.

Appellant's remaining allegations are criticisms directed at the BLM and the State of Nevada and we see no need to discuss them in disposing of this appeal.

As appellant has failed to furnish adequate evidence of his claims of ownership of horses on the public lands, although he has been given ample opportunity to do so, his claims must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ELKO DISTRICT OFFICE
2001 Idaho Street
Elko, Nevada

Date March 7, 1974

Mr Kent Gregersen
2260 West 4805 South
Salt Lake City, Utah 84119

x Certified Mail 3751
Registered
Return receipt requested

ACKNOWLEDGEMENT OF CLAIM OF OWNERSHIP OF HORSES OR BURROS
AND DECISION OF THE DISTRICT MANAGER

Your claim of animals filed on Affidavit and Claim of Ownership of Horses or Burros on Public Lands (Form 4710-1) was received in this office on (date) November 12, 1973 with amendment received in this office on December 5, 1973.

☐ Your claim as submitted is acceptable. Authorization to gather and remove the animals claimed will be issued later in accordance with the District Claiming Schedule.

THIS IS NOT AN AUTHORIZATION TO GATHER AND REMOVE CLAIMED ANIMALS *

☒ Your claim as submitted is rejected for the following reason(s):

☒ Claim form is not complete

☒ Claim does not constitute adequate proof of ownership

Specific Items Of Your Claim:

I. Number of animals claimed:

You stated: "17 exact number not known".

II. Give location of animals on Public Lands:

a. Geographic description:

You stated: "Pequop, Ruby Mtn. Range, Pancake Flat".

b. Legal description if surveyed:

You stated: "Not known."

III. Give location of lands where animals were kept prior to entry or introduction onto Public Lands:

You stated: "For some years before P.L. 92-195 was enacted; I branded horses in many areas in Nevada and Utah. Purpose: To keep ranchers from shipping them. If this had not been done, some areas would have absolutely no horses left today".

IV. Counter Claim:

You stated: "this is actually a counter claim to again prevent BLM from catering to the ranchers so they can clean the range of horses".

- V. Fence Project:
You raised the issue of a fence constructed on Public Land on the east side of Hamlin Valley to Miller Mountain along the Nevada-Utah State Line.
- VI. Relinquishment:
You stated: "If your district proves it is not pulling another Howe, Idaho deal; I may relinquish my claim to horses in your district."
- Reasons For Rejection On Specific Items:
- I. Number of animals claimed:
You are claiming "17 horses, exact numbers not known"; however, no documentary evidence was furnished to establish proof of ownership or how you acquired legal permission to brand horses in Elko County, Nevada. Research of the Elko County Records from 1930 to 1972 with the assistance of County Clerk does not reveal that you filed an application or received a permit from the Elko County Commissioners to capture and claim horses running at large on the Public Lands prior to the passage of Public Law 92-195. (NRS 569.360-569.430) The County Assessor's Tax Records do not reveal that you claimed, declared ownership or were assessed for any horses in Elko County, Nevada.
- II. Give location of animals on Public Lands:
a. Geographic description:
You indicated your horses were located in Pequop, Ruby Mountains, Pancake Flat Area.
b. Legal description if surveyed:
Legal description "Not known". The general description is vague and is questionable if you know where your horses (if owned) are grazing. The Ruby Mountains are under the administrative jurisdiction of Humboldt National Forest. Pancake Flats is in the Ely District of the Bureau of Land Management. The Pequop Mountain Range is in the Elko District. However, since you are unable to pin point a more precise legal location, I am unable to determine what people would be affected and who should be notified of meetings to coordinate a gathering operation on such a general description.
- II Give location of lands where animals were kept prior to entry or introduction onto Public Lands:
Your statement has little bearing as to location of lands where animals were kept prior to entry or introduction onto Public Lands. If you branded abandon horses running on Public Lands in Elko County without a capture permit, you were violating Nevada State Law. Branding abandon horses created estrays which defeated the status of this animal becoming a wild free-roaming horse under Public Law 92-195. In the event a horse(s) is corralled or captured in the Elko District wearing your brand, you will be able to claim this animal(s) under the provisions of State of Nevada Livestock Laws and Regulations, Chapter 569 Estrays. (NRS 569.005-569.130)
- IV. Counter Claim:
I interpret this statement to mean you do not want to gather your private horses in the Elko District and prefer to have the unbranded off-spring of your branded animals (if any) grazing on Public Lands protected and managed as wild free-roaming horses.
The unbranded progeny running on the Public Lands on or after December 15, 197?

falls within the definition of "Wild free-roaming horse" and will be protected, managed and controlled by the Bureau of Land Management. (43 CFR 4710-05)

V. Fence Project:

The fence constructed on the East side of Hamlin Valley to Miller Mountain is not in the Elko District; therefore, not under jurisdiction of the Elko District Manager and is not pertinent to this Affidavit and Claim of Ownership of Horses.

VI. Relinquishment:

As of this date, I have not received a written relinquishment concerning your pending Affidavit and Claim of Ownership of Horses. Therefore, this decision will serve as the formal action on your claim.

I wish to advise you that the Elko District is processing all claims for private horse grazing on Public Lands in strict accordance with regulations developed pursuant to Public Law 92-195.

I conclude that your Affidavit and Claim of Ownership of Horses or Burros is not acceptable for the above reasons and, therefore, I reject your claim in its entirety.

If your claim has been rejected for the lack of adequate proof of ownership and you have no further evidence to support your claim, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, within thirty (30) days from date of receipt of this decision, in accordance with the regulations in 43 CFR Part 1840 [Illegible Word] enclosed Information on Taking Appeals to the Board of Land Appeals (Form 1842-1)). However, if an appeal is to be taken, the notice of appeal must be filed in the above office (not the Board) so that the case file can be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

* Persons attempting to remove unbranded horses or burros from the public lands without authorization are subject to prosecution under PL 92-195.

E. A. Moore
District Manager

1 Enclosure
Encl. 1 - Form 1842-1

